

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JULIO PAREDES, 91-A-7695,

Plaintiff,

-v-

05-CV-0904Sr

CORRECTION OFFICER CHARRONE, et al.,

Defendants.

DECISION AND ORDER

Pursuant to 28 U.S.C. § 636(c), the parties have consented to the assignment of this case to the undersigned to conduct all proceedings in this case, including the entry of final judgment. Dkt. #42.

Currently before the Court is plaintiff's second motion for appointment of counsel pursuant to 28 U.S.C. § 1915(e). Dkt. #51.

There is no constitutional right to appointed counsel in civil cases. However, under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. See, e.g., Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23 (2d Cir. 1988). Assignment of counsel in this matter is clearly within the judge's discretion. In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984). The factors to be considered in deciding whether or not to assign counsel include the following:

1. Whether the indigent's claims seem likely to be of substance;

2. Whether the indigent is able to investigate the crucial facts concerning his claim;
3. Whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder;
4. Whether the legal issues involved are complex; and
5. Whether there are any special reasons why appointment of counsel would be more likely to lead to a just determination.

Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997); see also *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986).

The Court must consider the issue of appointment carefully, of course, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989). Therefore, the Court must first look to the "likelihood of merit" of the underlying dispute, *Hendricks*, 114 F.3d at 392; *Cooper*, 877 F.2d at 174, and "even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the . . . claim are thin and his chances of prevailing are therefore poor." *Carmona v. United States Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001) (denying counsel on appeal where petitioner's appeal was not frivolous but nevertheless appeared to have little merit).

The Court has reviewed the facts presented herein in light of the factors required by law. Plaintiff alleges that his First and Eighth Amendment rights were

violated when he was sexually harassed and abused by corrections officers and that corrections officers planted a weapon in his cell in retaliation for the filing of complaints against correctional officers and medical staff at the Southport Correctional Facility.

Dkt. #1. In support of his motion, plaintiff asserts that he needs someone to speak on his behalf. Dkt. #51. However, the Court has received numerous letters from plaintiff in which he has demonstrated his ability to articulate relevant facts to the Court and plaintiff's *pro se* complaint similarly demonstrates his ability to present his claims to the Court. Accordingly, plaintiff's motion for appointment of counsel is denied without prejudice at this time. It is the plaintiff's responsibility to retain an attorney or press forward with this lawsuit *pro se*. 28 U.S.C. § 1654.

Plaintiff's response to defendants' motion (Dkt. #46), for summary judgment shall be filed no later than November 7, 2008.

SO ORDERED.

DATED: Buffalo, New York
September 30, 2008

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge